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NO.

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

CAROLINE JEANETTE BRISTER, wife of/and ANTHONY HERMAN GERARD, for themselves and on behalf of their minor children SHARON, DOUGLAS, PATRICK, PAIGE and SANDRA

Plaintiffs and Appellants
IN FORMA PAUPERIS

VERSUS

THE PARISH OF JEFFERSON, State of Louisiana; THE SHERIFF, Parish of Jefferson, State of Louisiana; THE STATE OF LOUISIANA; FIREMEN'S FUND INSURANCE COMPANY; ROBERT KERRY and DEPUTY SHERIFF SERGEANT J. KOEHLER

Defendants and Appellees

On Petition for Writ of Certiorari to the Supreme Court of Louisiana

PETITION FOR CERTIORARI

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on behalf of their minor
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QUESTIONS PRESENTED FOR REVIEW

The questions presented for review are:

(1) Whether a deputy sheriff may enter a private home and club the occupants without probable cause and without a warrant;

(2) If the law allows such entry may the deputy club the householders when the object of his search is a 10-pound dog;

(3) Can a tort plaintiff be deprived of a deposition by his examining physician after trial when the State Code of Civil Procedure specifically provides for such and when the deposition information is necessary to allow the Court to set proper damages.

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OPINIONS OF LOWER COURTS AND TRIBUNALS

1. Decision of 24th Judicial District Court, Parish of Jefferson, dated June 9, 1981, without jury, Hon. H. Charles Gaudin, Judge, Division G, entitled: "CAROLINE JEANETTE BRISTER, wife of/and ANTHONY HERMAN GERARD ET AL VS. THE PARISH OF JEFFERSON, STATE OF LOUISIANA, ET AL" No: 210-460. (Appendix A)

2. Opinion of Court of Appeal, Fifth Circuit, State of Louisiana, dated December 9, 1982, entitled: "CAROLINE JEANETTE BRISTER, wife of/and ANTHONY HERMAN GERARD, FOR THEMSELVES AND ON BEHALF OF THEIR MINOR CHILDREN SHARON, DOUGLAS, PATRICK, PAIGE and SANDRA versus THE PARISH OF JEFFERSON, STATE OF LOUISIANA; FIREMEN'S FUND INSURANCE COMPANY THEIR INSUROR; ROBERT KERRY and

DEPUTY SHERIFF SERGEANT J. KOEHLER", No. 5-145 (Appendix B)

3. Decision by Louisiana Supreme Court on Application for Remedial Writs, dated March 11, 1983 (Application by Defendants Parish of Jefferson and Firemen's Fund Insurance Company) (Appendix D)

4. Decision by Louisiana Supreme Court for Remedial Writs, dated March 11, 1983 (Appendix E) (Application by Plaintiffs Gerard)

JURISDICTIONAL GROUNDS

The jurisdiction of this Court is invoked pursuant to U.S.C. 28:2101 and U.S.C. 28:1257 (3).

Petitioners seek to review the decision of the Louisiana Supreme Court in its March 11, 1983 refusal of application for remedial writs.

Petitioners Gerard had no favorable judgment at all in the Trial Court. The Court of Appeal, 5th Circuit, State of Louisiana, awarded them $1,000.00 for the invasion of their privacy by the parish dogcatcher.

The Court of Appeal refused to send the case back to the trial Court to allow the deposition of Gerard's physician under Louisiana procedural law so that the determination of his loss could be ascertained insofar as psychic injuries were concerned.

STATUTES INVOLVED

Basis for the petition is that tort recovery is allowed in Louisiana under Civil Code article 2315 when injuries are suffered from public officials who enter a home without warrant and strike the householders.

or otherwise injure them, without cause.

Article 1437 of the Louisiana Code of Civil Procedure, taken directly from federal procedure, is the basis for Gerard asking for a deposition after trial for the physician Dr. Roy Barnes of Memphis. This deposition has been refused several times by the trial court in spite of the fact that Gerard has been disabled since the incidents of 1978 which set the present litigation in motion.

Gerard has attempted suicide several times and he wishes this material on the record. The Louisiana Court of Appeal observed in giving Gerard $1,000.00 for invasion of privacy that inadequate material relating to psychic injuries was on the trial record.

STATEMENT OF THE CASE

Anthony H. Gerard, 57 years old, lives in a small room in Memphis. He has spent the major part of the past five years in insane hospitals, nursing homes and small cheap apartments. His income is from welfare.

He is impotent. He suffers from psychic fear of officers in uniform. He suffers with hepatitis. He has had several suicide attempts in the time since 1978. He has traumatic epilepsy from a heavy clout on the head. This blow was delivered by a Jefferson Parish deputy sheriff named Koehler. It was done with a club as Koehler conducted a warrantless search of the modest home of the Gerards. He was there looking for a 10-pound dog which allegedly had no license.

It all began on Thursday, February 25, 1978, when the children were returning home from school in Avondale Subdivision in Jefferson Parish, Louisiana, just upriver from New Orleans. Parish Dogcatcher Robert Kerry came to the Gerard home and accused them of allowing their 10-pound mutt Ding-a-Ling to roam the streets without a license. Gerard told the man that the little dog, a children's pet, lived in the Gerard home and their fenced back yard. The dogcathcer called on a deputy sheriff. The deputy advised the issuance of a citation. Kerry gave the citation. When this matter came to court it was dismissed.

On Sunday, February 28, 1978, at about 8:00 A.M. the dogcatcher again appeared at the Gerard home. He was met by one of the children who told

him that the Gerards were still abed. The 5 children were at the living room TV set, watching Bugs Bunny. Their ages were 2, 3, 10 and 12.

The dogcatcher returned in a few minutes with Deputy Koehler who got Gerard up and began to argue with him at the door.

Gerard did not leave the house, having come to the door in only a pair of trousers. He tried to retreat inside his own home but the deputy sheriff pushed his way in and came inside following Gerard about the front room trying to pin his arms with a billy.

He grabbed at Gerard and caused Gerard's trouser catch to come loose. As his trousers descended Gerard bent over to retrieve these along with his modesty. The deputy hit

him at this point with the club. The club struck his left brow and bounced onto a wall leaving a half inch dent there.

Koehler turned and poked Mrs. Gerard in the abdomen with the club. Then he left.

Approximately 10 minutes later about 10 police cars came to the Gerard house. A portion of the street was blocked off. Loudspeakers on the cars began chanting : "Come on out, Tony". Finally, a group of deputies stormed the side door breaking it down with their feet and clubs. Inside was found Gerard lying on his bed with an icepack held to his bleeding brow. Mrs. Gerard was on the phone frantically trying to reach her lawyer.

They arrested the Gerards and took them to jail - he still in just his trousers and she in her night-clothes. The car that took Mr. Gerard stopped enroute to jail to have his wounded brow closed with 8 stitches which were emplaced at West Jefferson Hospital.

Gerard and his wife got out of jail that Sunday. He went back to work in the following week, but shortly had seizures which were diagnosed at LSU Medical School as traumatic epilepsy. He lost his job as an advertising salesman because he could not drive while he took phenobarbital to control the epilepsy. He lost his part-time job as an opera singer. He has not had a job since with the exception of a couple of trials in rehabilitation

programs.

After a suicide attempt Dr. Roy Barnes of Memphis saw Gerard. He said he would suffer a lifetime of disability from the psychic fears of another warrantless invasion of his home by dogcatchers and from the trauma delivered to his head by the deputy's club.

The courts have consistently refused to allow a deposition of Dr. Barnes. Trial Court granted Jefferson Parish and their insurors Firemen's Fund Insurance Company Summary Judgment. This was overturned in the Court of Appeal, but the testimony of Dr. Barnes relative to the injury suffered by Gerard from the dogcatcher is yet to be a matter of record. No reason has been given for this refusal.

ARGUMENT

Prior to 1967 federal law approved a warrantless search of a residence if done under the cloak of public health and safety. FRANK V. STATE OF MARYLAND, 79 S. Ct. 804. But in 1967 CAMARA V. MUNICIPAL COURT, 87 S. Ct. 1727 voided the Frank rule. In Camara a building inspector entered a building without a warrant and under local law. The Supreme Court held that he had to have a warrant. In a companion case, SEE v. CITY OF SEATTLE, 87 S. Ct. 1737 a warrantless fire inspection of a warehouse was declared unacceptable.

The Louisiana Fifth Circuit of Appeal reversed the trial court and awarded Gerard the sum of $1,000.00 only. Gerard has lost wages of more

than $90,000.00 since the 1978 incident.

This $1,000.00 judgment was against the Parish of Jefferson and Firemen's Fund Insurance, their insuror. Had the Fifth Circuit Court of Appeal allowed the case to return to the trial level via remand then Dr. Roy Barnes could have testified and a realistic valuation of the injury suffered by Gerard from the dogcatcher could have been determined.

No reason has ever been given for the repeated refusal of the deposition of Dr. Roy Barnes, the Memphis psychiatrist who examined Gerard.

Gerard sought the deposition under Louisiana Code of Civil Procedure article 1437, which is taken from federal procedural law. Deposi-

tion after trial has been performed in federal cases since 1885. RICHTER v. UNION TRUST CO., 5 S. Ct. 1162. Article 1437 was taken from federal law.

Louisiana Courts, in interpreting an article of the Louisiana Code of Civil Procedure which is based on a federal rule, rely upon prior federal interpretation as a persuasive guide to meaning of the article. VAUGHN v. COMMERCIAL UNION INS. CO. OF N. Y. Court of Appeal of Louisiana, 4th Circuit, Rehearing denied. Writ refused, 1972, 263 So. 2d 50.

Since federal courts allow deposition after trial plaintiffs Gerard demand such in this case, because a deposition of Dr. Roy Barnes is the only device to show the amount of damage Gerard suffered from the

dogcatcher, whose responsibility for injury to plaintiff has been determined by the $1,000.00 judgment of the Court of Appeal. The amount of the judgment for Gerard is entirely too small. A deposition by Dr. Barnes will show what it should have been.

As to the deputy who came into Gerard's home without a warrant and then hit him on the head with a club the Court's attention is called to the twin cases of PAYTON v. NEW YORK and RIDDICK v. NEW YORK 63 L. Ed. 2d 639, 1980 where nonconsensual entry into a suspect's house to make a routine felony arrest was held violative of the 4th Amendment when done without a warrant.

Even if Gerard were guilty of the misdemeanor of not having a dog license (and this is not admitted

because it was impossible for the Parish to prove when they had no records) the invasion of his home was not allowed under PAYTON and RIDDICK.

CONCLUSION

It is respectfully requested that the Court grant a Writ of Certiorari and review the decision of the Supreme Court of Louisiana, which affirmed an opinion of the Court of Appeal, 5th Circuit, State of Louisiana, but allowing a judgment of only $1,000.00 against the Parish of Jefferson and their insuror Firemen's Fund Insurance Co. and holding the Sheriff of the Parish of Jefferson without fault in making a warrantless entry into Gerard's home and striking him with a club.

CERTIFICATE

The undersigned counsel of record certifies that service has been made by placing three copies of the foregoing petition in the U. S. Mail, postage prepaid on all parties required to be served listed below on this 3rd day of June, 1983.

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APPENDIX A

TWENTY-FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

No. 110-460 Division "G"

CAROLINE JEANETTE BRISTER, wife of/
and ANTHONY HERMAN GERARD, ET ALS

VS.

THE PARISH OF JEFFERSON,

STATE OF LOUISIANA, ET ALS

Filed June 9, 1981

J U D G M E N T

This case was heard on June 2 and 3, 1981, and concerns incidents that occurred on February 26, 1978.

After hearing the testimony and considering the evidence the Court makes these findings of fact:

(1) That Sgt. Joseph Koehler of the Jefferson Parish Sheriff's Office went to petitioner Anthony

Gerard's home at the request of and to assist Sgt. Robert Kerry, a dog pound officer employed by the Parish of Jefferson;

(2) That petitioners did in fact have an untagged and unlicensed dog in their home, and that they had refused to turn the animal over to Sgt. Kerry;

(3) That Sgt. Kerry had seen the dog and knew it was in the Gerard residence, and that he (Sgt. Kerry) had a lawful right to seize the animal;

(4) That Mr. Gerard was intentionally not truthful when he told Sgt. Kerry and later Sgt. Koehler that the dog was not on the premises;

(5) That when Mr. Gerard met Sgt. Koehler in the doorway, he

(Gerard) was forcefully loud and insisted that the dog was elsewhere;

(6) That Mr. Gerard who weighed approximately 300 pounds, persisted in his efforts to prevent seizure of the dog; he was placed under arrest by Sgt. Koehler and a scuffle ensued during which Mr. Gerard was struck by Sgt. Koehler's PR-24, a plastic club.

On February 8, 1979, Mr. Gerard and his wife Carolyn were tried in the Second Parish Court of Jefferson Parish. Mr. Gerard was found guilty of resisting arrest (L.S.A-R.S. 14:108) and of violating two Jefferson Parish ordinances regarding (a) the licensing of dogs and (b) the refusal to turn over untagged animals to dog pound officers. Mrs. Gerard was also found guilty of violating the Parish ordinances.

In their attempt to sustain the instant tort action, petitioners contend that Sgts. Koehler and Kerry acted illegally and/or improperly. The Court does not agree. Both officers had the right to be where they were, and both acted reasonably and lawfully considering all circumstances, particularly Mr. Gerard's peace-disturbing behavior.

Thus,

IT IS ORDERED, ADJUDGED AND DECREED:

(1) That there be judgment in favor of defendants Joseph Koehler, et als, and against petitioners Anthony Herman Gerard et als, dismissing their demands, with prejudice and at their cost; and

(2) That defendants' objection to petitioners' supplemental petition

be and it is hereby maintained because (a) said petition was not timely filed and (b) the petition relates to items of damages which are not at issue.

JUDGMENT READ, RENDERED AND SIGNED in open court in Gretna, Louisiana this 9th day of June, 1981.

(signed) Charles Gaudin
JUDGE

-

APPENDIX B

TWENTY FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

No: 210-460 Division "G"

CAROLINE BRISTER, ET AL

VS.

PARISH OF JEFFERSON, ET AL

JUDGMENT

It is ordered that mover in rule's request to depose Dr. Roy J. Barnes be and it is hereby denied.

GRETNA, LOUISIANA, this 2nd day of October, 1981.

(signed) Charles Gaudin
JUDGE

-

APPENDIX C

NO. 5-145

COURT OF APPEAL

FIFTH CIRCUIT

STATE OF LOUISIANA

* * * * * * *

CAROLINE JEANETTE BRISTER, wife of/ and ANTHONY HERMAN GERARD, FOR THEMSELVES AND ON BEHALF OF THEIR MINOR CHILDREN SHARON, DOUGLAS, PATRICK, PAIGE and SANDRA

VERSUS

THE PARISH OF JEFFERSON, STATE OF LOUISIANA, FIREMEN'S FUND INSURANCE COMPANY, THEIR INSUROR; ROBERT KERRY and DEPUTY SHERIFF SERGEANT J. KOEHLER

APPEAL FROM THE
TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
No. 210-460 Division "G"
HONORABLE H. CHARLES GAUDIN, JUDGE

* * *

CHARLES GRISBAUM, JR.
JUDGE

December 9, 1982

(Court composed of
Judges L. Julian Samuel,
Thomas J. Kliebert, and
Charles Grisbaum, Jr.)

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AFFIRMED IN PART AND

REVERSED IN PART.

This personal injury suit involves the alleged torts of false imprisonment battery, and invasion of privacy. Plaintiffs, a husband and wife, individually and on behalf of their minor children bring suit to recover damages from a police officer, the Sheriff, Parish of Jefferson, a Jefferson Parish dog pound officer, the Parish of Jefferson, and its insuror for the alleged intentional torts of battery and false imprisonment and for an alleged illegal search of their home. Plaintiffs appeal from the trial court's dismissal of plaintiffs' cause against the dog pound

officer and the Parish of Jefferson and its insuror after the close of plaintiffs' case and from the judgment against the plaintiffs and in favor of the defendants, the police officer and the Sheriff, Parish of Jefferson, rendered after trial on the merits. We affirm in part and reverse in part.

In February of 1978 plaintiffs, Anthony Gerard and his wife, owned a dog, Ding-a-Ling. Jefferson Parish dog pound officer, Mr. Robert Kerry, had received numerous complaints from the neighbors that this animal was allowed to roam the streets of the neighborhood. Officer Kerry himself had observed the dog loose on more than one occasion. He also believed that the dog was unlicensed and unvaccinated. On February 23, 1978 defendant Kerry gave Mr. Gerard a

citation for having an unlicensed, untagged, and unleashed dog. Several days later, on Sunday, February 26, 1978, Mr. Kerry testified that as he was checking the neighborhood for roaming animals, he again observed plaintiffs' dog loose and stopped by plaintiffs' house at approximately 8:00 a.m. to check whether plaintiffs had obtained the correct papers on the dog. The following episode ensued. Defendant Kerry was met by one of the Gerard children who asked him to return later because his parents were not awake. Because he was given what he felt to be unresponsive and evasive answers to his request to see the dog's vaccination papers, Kerry called the Jefferson Parish Sheriff's office for assistance. Defendant Sergeant Koehler responded.

Both Koehler and Kerry went to the Gerard home. According to Koehler and Kerry, when Mr. Gerard came to the door he began yelling at them. Sergeant Koehler testified that he explained the Jefferson Parish Animal Control Ordinance (No. 12146)[1] to Mr. Gerard; however, Mr. Gerard insisted that the dog was not in his possession and that his father-in-law was having her vaccinated. At trial Mr. Gerard testified that he lied about Ding-a-Ling and that the dog was actually hidden in the bath room. Mr. Gerard was advised that if he did not produce the dog or his papers of vaccination, Sergeant Koehler would arrest him. A heated argument followed.

The parties have somewhat different versions of what transpired, but the essential events are agreed upon by all parties. Sergeant Koehler told Mr. Gerard he was under arrest and attempted to effectuate the arrest by taking Gerard's arm. According to Kerry, Mr. Gerard pushed Sergeant Koehler over and attempted to slam the door on Sergeant Koehler. Koehler persisted in his efforts to take Mr. Gerard into custody by grabbing his waistband. Again, Sergeant Koehler told Gerard he was under arrest and attempted to lead him back to the front door, but Gerard brushed his hand off of his pants. Sergeant Koehler attempted several times to use his PR24 stick to place Mr. Gerard's arm behind his back. However, due to Mr. Gerard's size and strength, Koehler was not able to gain control of Gerard

using this method. The officer attempted again to grab Mr. Gerard's waistband, but the waistband broke, and Gerard's pants fell. Sergeant Koehler testified that Mr. Gerard reached down to pick up his pants and arose threateningly. Fearful that Mr. Gerard would strike him, Sergeant Koehler struck Mr. Gerard with the PR23 stick. Sergeant Koehler also testified that he struck Mrs. Gerard inadvertently in the stomach as she was holding his arm. Again the police officer tried to lead Mr. Gerard to the front door but was unable to do so. Due to his inability to control Gerard, Sergeant Koehler left the Gerard home and called for additional police assistance.

Mr. Gerard's version of the episode is that as soon as he came to the door Sergeant Koehler started

arguing with him. According to Gerard, Sergeant Koehler asked him where the dog was and stepped across the threshhold. Immediately, Gerard asked, "What are you doing?" When Gerard asked if he was being arrested because the dog was not there, Gerard was told that he was under arrest. Gerard's reply was that the officer could not arrest him because he had no warrant. When he moved away from the police officer, the officer followed him into the house. At the hallway Sergeant Koehler grabbed his pants; the catch broke, an and as he reached down to pick them up, Officer Koehler struck him across the head with a billy club. Gerard and his wife, as well as two of his children, testified that Sergeant Koehler then turned and poked Mrs. Gerard in the stomach and ran out the

front door.

Gerard testified that when he did not come out when ordered out of the house over a loudspeaker, the police kicked his back door down and placed him and his wife under arrest. They were escorted out of the house and taken away. The dog catcher then entered the Gerard home, found Ding-a-Ling near a laundry room, seized her in the presence of at least one of the Gerard children, and brought her to the animal control center.

ISSUES

The issues are as follows:

1) Whether plaintiffs, husband and wife, are entitled to damages for the intentional tort of false imprisonment?

2) Whether plaintiffs, husband and wife, are entitled to damages

for invasion of privacy?

FALSE ARREST AND IMPRISONMENT

False arrest and imprisonment occur when one arrests and restrains another against his will without color of legal authority. Kyle v. City of New Orleans, 353 So. 2d 969, 971 (La. 1977); Barfield v. Marron, 62 So. 2d 276, 280 (La. 1952). If a police officer acts pursuant to statutory authority in arresting and incarcerating a citizen, he is not liable for damages for false arrest and imprisonment. Kyle, supra. Under Louisiana Code of Criminal Procedure article 213 (3), a peace officer may arrest a person without a warrant, when the officer has "reasonable cause to believe that the person to be arrested has committed an offense, although not in the presence of the officer..." This article

provides statutory authority for the arrest in this case.[2] The reasonable cause required in article 213 (3) exists when the facts and circumstances within the arresting officer's knowledge and of which he has reasonable and trustworthy information are sufficient to justify a man of average caution in belief that the person to be arrested has committed or is committing an offense. See State v. Davis, 407 So. 2d 666, 668 (La. 1981); State v. Elliot, 407 So. 2d 659, 661 (La. 1981).

In this case the dog catcher asked the police officer to assist him in enforcing an animal control ordinance. The dog catcher explained he had been to the plaintiff's home on two occasions and had warned them that a vaccination certificate for

the dog had to be produced. He told the officer that he had been to the house only fifteen minutes before and had seen the dog at the house. The police officer, therefore, had reasonable cause to believe that plaintiffs had violated Jefferson Parish Ordinance No. 12146 which requires, among other things, that one have a license and/or proof of vaccination of a dog. Since the police officer had authority for the arrest under Criminal Code of Procedure article 213 (3), plaintiffs cannot recover damages for false arrest and imprisonment.

BATTERY

Also to be considered is whether plaintiffs, the husband and wife, can recover for batteries inflicted upon them by the police officer. A lawful arrest is a defense to the intentional

tort of battery when reasonable force is used to effect such an arrest. See Kyle, 353 So. 2d 969, 972.[3] However, if an officer used unreasonable or excessive force, he and his employer are liable for any injuries which result. La. C.C. art. 2320; Kyle, 353 So. 2d 969, 972; Picou v. Terrebonne Parish Sheriff's Office, 343 So. 2d 306, 308 (La. App. 1st Cir. 1977); Taylor v. City of Baton Rouge, 233 So. 2d 325, 330 (La. App. 1st Cir. 1970). We must evaluate this officer's actions against the standard of an ordinary, prudent, and reasonable man placed in the same position and with the same knowledge as this officer. Kyle, 353 So. 2d 969, 973; Picou, supra. Since the degree of force employed is a factual issue the trial court's finding is entitled to great weight. Kyle,

supra; Canter v. Koehring Co.,282 So. 2d 716, 724 (La. 1973); Picou, 343 So. 2d 306, 309. Kyle sets forth several factors to be considered in making this determination of reasonableness such as the known character of the arrestee, the risk and dangers faced by the officer, and the nature of the offense involved, the chance of the arrestee's escape if the particular means are not employed, the existence of alternative methods of arrest, the physical size, strength and weaponry of the officer as compared to the arrestee, and the exigencies of the moment. Kyle, supra.

The facts and circumstances of this case support the trial court's finding that the defendant police officer acted reasonably. The record reflects that Mr. Gerard was upset when he came to the door. He responded to

Officer Koehler's questions in a belligerent manner and often with evasive answers. When Koehler placed Mr. Gerard under arrest, Gerard resisted and retreated inside his home. Due to Mr. Gerard's size and strength, Koehler's several attempts to effectuate his arrest were of no avail. Officer Koehler testified that he struck Mr. Gerard with the PR24 when Gerard made a fist. Koehler stated that he felt Gerard would strike him. Moreover, Officer Koehler hit Mr. Gerard only once which Koehler stated had little effect upon Gerard; Gerard did not go to his knees nor did he surrender to the officer but continued to resist the officer. This plaintiff's general demeanor, the fact that he weighed 300 pounds, combined with the fact that he seemed to be ready to strike the

officer, indicate that the officer's one blow to plaintiff Anthony Gerard was not unreasonable. We also accept, as did the trial court, Officer Koehler's version of the episode that in attempting to dislodge Mrs. Gerard's hold on his arm he accidently hit her in the stomach. Canter, supra. Under the facts, the police officer made a lawful arrest and used reasonable force in order to effect the arrest and to overcome plaintiff's resistance.

INVASION OF PRIVACY

Louisiana recognizes tort recovery for invasion of privacy.[4] The right to privacy includes the right to be free from unwarranted intrusion into one's own quarters.[5] Parish National Bank, 397 So. 2d 1282, 1286. In Louisiana in order to recover for an invasion of privacy, plaintiffs

must show they have an "actionable" claim not merely an "actual" claim. Parish National Bank, 397 So. 2d 1282, 1286; Jaubert, 375 So. 2d 1386, 1389; Love, 273 So. 2d 460, 464-66; Hamilton, 82 So. 2d 61, 70. An invasion of privacy is "actionable" when the defendant's conduct is unreasonable and seriously interferes with the plaintiff's privacy interest. To determine the reasonableness of the defendant's conduct, this court must balance defendant's interest in pursuing his course of conduct against plaintiff's interest in protecting his privacy. Parish National Bank, supra; Jaubert, supra. "Where a defendant's action is properly authorized or justified by circumstance, it may be found reasonable and nonactionable even though it amounts to a slight invasion of the plaintiff's privacy." Parish National

Bank, supra.

Applying the above principles, we find that plaintiffs do not have an actionable claim for invasion of privacy against the police officer and his employer; however, plaintiffs do have an actionable claim against the dog pound officer and his employer.[6] As noted above, the police officer was authorized under La. C. Cr. P. art. 213 (3) to arrest the husband and wife; his actions were reasonable under the circumstances and, therefore nonactionable. However, the dog pound officer had no authority under the Parish Animal Control Statute[7] or any other Louisiana statutes or jurisprudence to enter the home and seize an unlicensed animal. Under the circumstances his actions were not justified. The dog had not bitten anyone nor does the record indicate that the dog was

reported as a dangerous or vicious animal. Importantly, at least one of the Gerard children still remained in the home and was present when the officer seized the dog. Considering the specific procedures set forth in the Jefferson Parish Animal Control Ordinance for violation of its procedures, we cannot say the officer was justified in entering the home.[8] When we weigh the importance of the privacy of one's home, against the Parish's interest in having animals properly licensed and leashed when upon public streets, we conclude that the dog pound officer's actions in entering the home to seize the animal were unreasonable.

Plaintiffs allege in their petition for damages that the dog pound officer's actions caused psychic injuries to themselves and their chil-

dren. They also claim entry into their home without a warrant as an injury in itself as well as damages for humiliation, mental anguish, and extreme mental suffering. The plaintiffs inadequately addressed the issues of psychological injuries at the trial court level. Consequently, the trial court granted a motion to dismiss the plaintiffs' case as to the dog officer and his employer on the grounds that no damages were proven with regards to this defendant's actions. While we agree with the trial court that the plaintiffs presented no evidence of the children's psychological injuries, we do find plaintiffs have shown they were injured by the physical intrusion into their home by the dog catcher.[9] Throughout the proceedings, there is testimony evidencing the Gerards' desire to protect the

sanctity of their home. Mr. and Mrs. Gerard made several strenuous objections to the presence of outsiders in their home without a warrant before they were arrested. We conclude that plaintiffs have shown an actionable claim for invasion of privacy against the dog pound officer and his employer and award them $1,000.00 under our authority provided in La. C.C.P. art. 2164. We reverse the lower court's dismissal of plaintiffs' claim against the dog pound officer and his employer, the Parish of Jefferson, and award $1,000.00 damages for invasion of privacy to plaintiffs against Robert Kerry, the Parish of Jefferson, and its insuror, Firemen's Fund Insurance Company.

For the above reasons, we affirm that part of the trial court's judgment which finds in favor of defend-

ants, Deputy Sheriff Sergeant J. Koehler, and the Sheriff, Parish of Jefferson, and against plaintiffs. We reverse that part of the trial court's judgment which dismisses plaintiffs' claim against Robert Kerry and the Parish of Jefferson and its insuror, Firemen's Fund Insurance Company, and it is now ordered that there be judgment against those defendants, in solido, and in favor of the plaintiffs in the full sum of $1,000.00.

AFFIRMED IN PART AND REVERSED IN PART.

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1. Several of Jefferson Parish's Animal Control Ordinance's pertinent provisions are:

"Sec. 4-17 (c) Dogs at large; violation notices. No dog shall be permitted to run or be upon any street, alleyway, highway, common or public square unless under the immediate control of a competent person and restrained by a substantial chain or leash

not exceeding six (6) feet in length...

Sec. 4-13 (a) Registrations, tags and vaccination. It shall be the duty of the owner or keeper of every dog or cat over four (4) months old to register same with the department by purchase of a dog or cat license. Such license shall be dated and indicate the number of the license tag issued for the dog or cat at the time it is vaccinated by a licensed veterinarian or licensed veterinary technologist with appropriate anti-rabies vaccine at the owner's expense...

Sec. 4-16 (c) Public nuisance. Every owner or keeper of animals shall exercise proper care and control of such animals so as to prevent them from creating or becoming a public nuisance. Excessive or untimely barking, howling or yelping so as to disturb the peace and quiet of a neighborhood or its residents or to disturb the health or repose of the residents; attacking or molesting passersby or other animals; being repeatedly at large; ...all shall be deemed to be the creation of a public nuisance and the owner or keeper of an animal causing such public nuisance shall be guilty of a misdemeanor and subject to the penalties of section 4-25 of this article."

2. Payton v. New York, 445 US 573 (1980) and State v. Brown, 387 So. 2d 567 (La. 1980) prohibit a warrantless, non-exigent arrest in the home. However, State v. Pittman, 397 So. 2d 1297, 1298 (La. 1981) held that the Payton rule is not retroactive. The arrest in this case occurred February 26, 1978; Payton and Brown were decided in 1980.

3. Code of Criminal Procedure art. 220 authorizes the use of "reasonable" force in making arrests; it provides:

> "A person shall submit peaceably to a lawful arrest. The person making a lawful arrest may use reasonable force to effect the arrest and detention, and also to overcome any resistance or threatened resistance of the person being arrested or detained." (Emphasis added)

4. See, e.g., Parish National Bank v. C.E. Lane, 397 So. 2d 1282, 1285-86 (La. 1981); Jaubert v. Crowley Post-Signal, Inc., 375 So. 2d 1386, 1388-89 (La. 1979); Lucas v. Ludwig, 313 So. 2d 12, 14-15 (La. App. 4th Cir. 1975); Love v. Southern Bell Telephone and Telegraph Co., 263 So. 2d 460, 464-66 (La. App. 1st Cir. 1972); Hamilton v. Lumbermen's Mutual Casualty Co., 82 So. 2d 61, 63-64 (La. App. 1st Cir. 1955).

5. Other forms of invasion of privacy recognized in Louisiana include the appropriation of an individual's name or likeness for the use or benefit of the defendant, publicity which unreasonably places the plaintiff in a false light before the public, and the unreasonable public disclosure of embarrassing private facts. Jaubert, 375 So. 2d 1386, 1388.

6. La. C.C. art. 2320.

7. Although the Parish claims Section 4-21 provides authority for an authorized employee of the animal shelter department to enter a premises to take possession of and remove animals kept in

violation of the provisions of the Parish Code, this article provides removal of "abandoned" or "neglected" animals from buildings or premises.

8. Section 4-12 (c) authorizes the Animal Shelter Advisory Board to constitute a committee of three or more members to hear all complaints involving violations of the provisions of the statute. For example, this committee hears complaints under Section 4-16 (c) pertaining to animals considered to be a public nuisance because repeatedly found to be at large. It requires notice to the defendant of a hearing and a right to be represented by counsel. Also to be noted, Section 4-17 (c) authorizes the seizure of dogs found at large.

9. See, Ford Motor Company v. Williams, 132 SE 2d 206, 211-12 (Ga. App. 1963), revd on other grounds 132 SE 2d 32 (Ga. 1963) where an intrusion of privacy was found even though plaintiff was not present at the time of the entry into his home.

* * *

APPENDIX D

THE SUPREME COURT

OF THE STATE OF LOUISIANA

83-C-8344

CAROLINE JEANETTE BRISTER, wife of/and ANTHONY HERMAN GERARD, FOR THEMSELVES AND ON BEHALF OF THEIR MINOR CHILDREN SHARON, DOUGLAS, PATRICK, PAIGE, AND SANDRA

VERSUS

THE PARISH OF JEFFERSON, STATE OF LOUISIANA; THE SHERIFF, PARISH OF JEFFERSON, STATE OF LOUISIANA; FIREMAN'S FUND INSURANCE COMPANY, THEIR INSUROR; ROBERT KERRY, AND DEPUTY SHERIFF SERGEANT J. KOEHLER

- - - -

In Re: Parish of Jefferson and Fireman's Fund Insurance Company applying for Writ of Certiorari, or Review to the Court of Appeal, Fifth Circuit, No. 5-145; 24th Judicial District Court, Parish of Jefferson, No. 210-460.

- - - -

March 11, 1983

Denied.

HTL

JAD

PFC

WFM

JLD

FAB

JCW

Supreme Court of Louisiana
March 11, 1983

Frans LaBranche
_____(signed)
Clerk of Court
For the Court

APPENDIX E

THE SUPREME COURT
OF THE STATE OF LOUISIANA

NUMBER 83-C-0317

CAROLINE JEANETTE BRISTER, wife of/
and ANTHONY HERMAN GERARD,
for themselves and on behalf of
THEIR MINOR CHILDREN SHARON,
DOUGLAS, PATRICK, PAIGE and SANDRA

VS.

THE PARISH OF JEFFERSON, STATE OF LOUISIANA; THE SHERIFF, PARISH OF JEFFERSON: FIREMEN'S FUND INSURANCE COMPANY, THEIR INSUROR; ROBERT KERRY, AND DEPUTY SHERIFF SERGEANT J. KOEHLER

- - - - - -

In Re: Caroline Jeanette Brister, Wife of/and Anthony Herman Gerard for themselves and on behalf of their minor children Sharon, Douglas, Patrick, Paige, and Sandra, applying for writs of Certiorari and review from the Fifth Circuit Court of Appeal Number 5-145 Parish of Jefferson, from the 24th Judicial District Court, Number 210-460, Division "C"

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March 11, 1983

Denied.

HTL

PFC

WFM

JLD

FAB

JCW

DIXON, C.J. would grant this writ.

Supreme Court of Louisiana
March 11, 1983

Frans LaBranche (Signed)
Clerk of Court
For the Court